

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.08.2008
CORAM
THE HONOURABLE MR. JUSTICE K.RAVIRAJA PANDIAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Petitions Nos.547 and 24765 of 2004

M/s Earth Minerals Resources (P) Ltd.,
rep. by its Managing Director,
No.146, Palayamkottai Road,
Tuticorin-628 003. Petitioner in
WP.547/2004

M/s Transworld Garnet (India) Private
Limited, (rep. by its Chairman &
Managing Director),
Ramaniyam Arcade, III floor,
E28, II Avenue, Besant Nagar,
Chennai-600 090. Petitioner in
WP.24765/2004

Vs.

Government of India,
Department of Atomic Energy,
rep. by Joint Secretary to Government
of India and Licensing Authority,
Anusakthi Bhavan,
Chatrapathi Shivaji Maharaja Marg,
Mumbai-400 001. Respondent in WPs.
Nos.547&24765/2004

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorari as stated therein.

For Petitioners :: Mr.P.S.Venkatasubramanian

For Respondent :: Mr.M.Ravindran,
Addl. Solicitor General,
Assisted by Mr.P.Wilson,
Asst. Solicitor General
COMMON ORDER

(Order of the Court was made by
K.RAVIRAJA PANDIAN, J.)

These writ petitions are filed by the petitioners seeking for the relief of writ of certiorari to call for the records of the respondent relating to the order passed in Reference No.7/5 (15) 2002-PSU/Vol.II/468 dated 15/16.07.2004 and quash the same in and by which the licence granted in favour of the petitioners in the respective petition under the Atomic Energy Act, 1962 for handling the mineral ilmenite have been cancelled.

2. As the issue involved in these writ petitions is one and the same, they are disposed of by this common order and the facts in writ petition No.547 of 2004 are taken up for discussion.

3.The material facts of the case are as follows :

The petitioner is a 100% Indian company incorporated under the provisions of the Companies Act, 1956. The petitioner is engaged in processing and exporting of ilmenite by virtue of licence granted under the provisions of Atomic Energy Act for handling the mineral ilmenite. Under the said Act ilmenite is one of the prescribed substances which can only be dealt with or handled under the specific licence granted under the said Act.

4. The mineral ilmenite is notified as prescribed substance under the Atomic Energy Act. Being one of the prescribed substances, no licence is being granted for the purpose of directly mining ilmenite. However, licence is being granted for mining garnet, a major mineral from beach sand under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 to various persons/companies. While processing the beach sand for separation of garnet, the garnet lean tailing rich in ilmenite also was obtained and separated. The garnet licence holders are obligated under the licence not to deal with garnet lean tailing rich in ilmenite being a prescribed substance, but to deliver the same to M/s. Indian Rare Earth Ltd., a company under the Department of Atomic Energy.

5. The Government, in terms of its policy resolution No.8(1) 1997-PSU/1422 dated 06.10.1998 permitted the Indian company to handle and deal with the prescribed substance ilmenite. It also granted licence to the licensees of garnet to deliver the same to licenced companies. The petitioner was issued licence on 01.01.2003 for handling the mineral ilmenite upto 58000 tons per annum. In pursuance of the same and by virtue of the policy resolution dated 06.10.1998, the petitioner obtained garnet lean tailing rich in ilmenite, which is separated while processing the beach sand for the purpose of getting garnet from the garnet licensees who were also issued with the licence to dispose of the garnet lean tailing rich in ilmenite to the licence holder like the petitioner and processing and exporting the same to foreign countries.

6. The licence granted in favour of the petitioner was valid for a period from 01.01.2003 to 31.12.2005. While the licence was in currency, the respondent cancelled the licence granted in favour of the petitioner for certain alleged violations by reason of the impugned order in the writ petitions, i.e., by order dated 15/16.07.2004. The correctness of the same is now assailed in the writ petition.

7. We heard the learned counsel on either side and perused the materials available on record.

8. When the matter was taken up for disposal, learned counsel appearing on either side submitted that the Department of Atomic Energy issued a notification in S.O.61(E) dated 18.01.2006, superseding the Notifications in S.O.211 (E) and 212 (E) both dated 15.03.1995 in and by which the special mineral ilmenite was notified to remain as "prescribed substance" only till such time the policy on Exploration of Beach Sand Minerals notified vide Resolution No.8/1(1)97-PSU/1422 dated 06.10.1998 is adopted revised/modified by the Ministry of Mines or till the 1st January 2007, whichever occurs earlier and shall cease to be so thereafter.

9. As per the notification, on and from 02.01.2007 ilmenite ceased to be one of the prescribed substances and consequently no licence need to be obtained to deal with the said mineral. Further, the licence granted to the petitioner for the period from 01.01.2003 till 31.12.2005 has also expired by efflux of time. In view of the fact that the licence granted to the petitioner having expired already, coupled with the further fact that as per the notification above referred to dated 18.01.2006 on and from 02.01.2007, the mineral ilmenite has ceased to be a "prescribed substance" under the Atomic Energy Act. All the grievance of the petitioners against the cancellation of handling licence of the said mineral ilmenite has faded into thin air and the relief sought for in these writ petitions is not in existence as of now.

10. Learned counsel has annexed the notification above referred to dated 18.01.2006 of the Department of Atomic Energy in the typed set of papers.

11. In view of the issuance of notification, which is subsequent to the filing of the writ petitions, whereby the mineral ilmenite ceased to be a "prescribed substance" and consequently dealing with it requires no licence from the Department of Atomic Energy and the further fact that the licence granted to the petitioners already expired by efflux of time on and from 31.12.2005, we are of the view that there remains nothing to be adjudicated in the writ petitions which are filed challenging the cancellation of the handling licence granted in favour of the respective writ petitioners.

12. Learned counsel for the petitioners submitted that at the time of filing writ petitions against the cancellation of the licence granted in their favour, they were having stock of processed ilmenite with them and the petitioners may be allowed to export the same. Whether the petitioners were having the stated quantity of stock of processed ilmenite for export or not is a question of fact to be decided by the respondent only. Further, as of now, no licence is stated to be necessary for handling and exporting ilmenite and hence, it is well open to the petitioners to prove the fact of availability of stock at the time of cancellation of licence before the respondent and get necessary orders from them.

13. These writ petitions are dismissed as nothing survives for adjudication. The writ petitions are dismissed. No costs. The connected miscellaneous petitions are consequently dismissed.

(K.R.P.J.) (P.P.S.J.J.)
12.08.2008

Index:Yes

Internet:Yes

raa/mf

To

The Joint Secretary to Government
of India and Licensing Authority,
Government of India,
Department of Atomic Energy,

Anusakthi Bhavan,
Chatrapathi Shivaji Maharaja Marg,
Mumbai-400 001.

K.RAVIRAJA PANDIAN, J.

And

P.P.S.JANARTHANA RAJA, J.

W Ps Nos.547 & 24765 of 2004
WPMPs. No.519 & 30128 of 2004 &
WVMP No.32 of 2004

12.08.2008